Supreme Court, U.S.
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No. 94-

# In the Supreme Court
OF THE
# United States

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OCTOBER TERM, 1994

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ALICE ALLEN and LAURA FEINNER
*Petitioners,*
VS.
CITY OF DUARTE and DUARTE REDEVELOPMENT AGENCY,
political subdivisions of the
State of California
*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

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## QUESTION PRESENTED

Whether the California Court of Appeal violated Petitioners' rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment when it ruled that Petitioners lacked standing to challenge the redevelopment plan of the city in which Petitioners resided and paid a tax, because Petitioners did not pay a tax on real property in the city.

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Petitioners, ALICE ALLEN and LAURA FEINNER, respectfully request that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California for the Second Appellate District, Division Four, filed April 14, 1994.

## OPINIONS BELOW

The opinion of the Court of Appeal of the State of California for the Second Appellate District, Division Four, filed April 14, 1994, is printed in Appendix A; the opinion is not published or reported. The order of the Court of Appeal denying Petitioners' Petition for Rehearing, filed May 16, 1994, is printed in Appendix B. The order of the Supreme Court of the State of California denying Petitioners' Petition for Review, filed July 13, 1994, is printed in Appendix C. The Statement of Decision of the Superior Court of the State of California for the County of Los Angeles, filed April 27, 1992, is printed in Appendix D. The Judgment of the Superior Court, filed April 27, 1992, is printed in Appendix E.

## JURISDICTION

The judgment of the California Court of Appeal was entered on April 14, 1994 (App. A). A timely petition for rehearing was denied on May 16, 1994 (App. B). A timely petition for review by the California Supreme Court was denied on July 13, 1994 (App. C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

## CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in part:

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution provides in part:

". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATUTES INVOLVED

Section 860 of the California Code of Civil Procedure (West 1980) provides:

"A public agency may upon the existence of any matter which under any other law is authorized to be determined pursuant to this chapter, and for 60 days thereafter, bring an action in the superior court of the county in which the principal office of the public agency is located to determine the validity of such matter. The action shall be in the nature of a proceeding in rem."

Section 863 of the California Code of Civil Procedure (West 1980) provides in part:

"If no proceedings have been brought by the public agency pursuant to this chapter, any interested person may bring an action within the time and in the court specified by Section 860 to determine the validity of such matter. . . ."

Section 33501 of the California Health & Safety Code (the California Community Redevelopment Law, Section 3) provided in 1990 in part (West 1973):

"An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds and the redevelopment plan to be financed or refinanced, in whole or in part, by the bonds, or to determine the validity of a redevelopment plan not financed by bonds, including . . . the legality and validity of all proceedings theretofore taken for or in any way connected with the establishment of the agency, its authority to transact business and exercise its powers, the designation of the survey area, the selection of the project area, the formulation of the preliminary plan, and the adoption of the redevelopment or renewal plan, . . . ."

Section 526a of the California Code of Civil Procedure (West 1980) provides:

"An action to obtain a judgment restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the State, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year

before the commencement of the action, has paid, a tax therein. . . ."

## STATEMENT OF THE CASE

### A. The Complaint

Petitioners alleged that they are "lower income" residents of the City of Duarte, California ("Duarte" or "the City"), who pay housing rent in excess of 40 percent of their gross monthly incomes. J.A. 616 (First Amended Complaint ["Complaint"], par. 6).[1] They further alleged that they "have paid a tax to the City within one year prior to the commencement of this action." J.A. 617 (Complaint, par. 9). On August 27, 1990, after exhausting their administrative remedies by presenting their written objections to the

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[1] "J.A." refers to the Joint Appendix filed with the California Court of Appeal in this case. The California Health and Safety Code defines "lower income households" as those whose income does not exceed the qualifying limits for lower-income families as currently established under Section 8 of the United States Housing Act of 1937. Health & Safety Code § 50079.5 (West 1986). Petitioner ALLEN alleged that she pays rent exceeding 50 percent of her gross monthly income; petitioner FEINNER alleged that she pays rent exceeding 40 percent of her gross monthly income. Complaint, par. 6 (J.A. 616). California law defines "Affordable Rent" for lower-income households as equalling 30 percent or less of a family's gross income. Health & Safety Code § 50053 (b) (2) (West 1994 Supp.).

City Clerk of Duarte (Statement of Decision ["Trial Court Decision"], App. D at 4), petitioners filed in the Superior Court for Los Angeles County their timely complaint challenging the validity of Duarte's Amendment No. 1 to its Redevelopment Plan for the Rancho Duarte Phase III Redevelopment Project ("Amendment No. 1" or "the Amendment").

Petitioners based their action on three California statutes that authorize citizens to bring suit challenging actions taken by public agencies of the State:

(1) the California Community Redevelopment Law, California Health & Safety Code Section 33501, which provides that "[a]n action may be brought" pursuant to specified provisions of the California Code of Civil Procedure to determine the validity of a redevelopment plan (Trial Court Decision, App. D at 2);

(2) California Code of Civil Procedure ("CCP") Section 863, one of the provisions specified by Health & Safety Code Section 33501; CCP § 863 provides that if no proceedings have been brought by a public agency (pursuant to CCP § 860) to "determine the validity" of an action taken by the agency, then "any interested person" may bring such a proceeding (known as a "validating action") (Trial Court Decision, App. D at 2);

(3) California Code of Civil Procedure Section 526a, which provides that an action to obtain a judgment "restraining and preventing any illegal expenditure" of funds by a municipality may be brought by "a citizen resident therein" who within the previous year has paid "a tax therein." See Complaint,

Fifteenth Cause of Action ("Injunction against City and Agency to Prevent the Illegal Expenditure of Public Funds)," J.A. 637-38; Court of Appeal opinion, App. A at 23."

Petitioners challenged Amendment No. 1 for failure to comply in a number of respects with both the California Community Redevelopment Law (Health & Safety Code Section §§ 33000 *et seq.*) and the California Housing Element Law (California Government Code §§ 65580 *et seq.*). Under the Community Redevelopment Law ("CRL"), a redevelopment plan may provide that property tax revenues that would otherwise be available to State and local taxing entities from land within the boundaries of the plan may be frozen as of the date the plan is adopted, and any tax revenues generated by increased property values following adoption of the plan may thereupon be allocated to the redevelopment agency instead of the usual taxing entities. See Health & Safety Code § 33670; *Leach v. City of San Marcos*, 213 Cal. App.3d 648, 653 (1989). Although Duarte's original plan for the Rancho Duarte Phase III Redevelopment Project did not include these "tax increment financing" provisions, Amendment No. 1 amended the plan to include them. See Court of Appeal opinion, App. A at 2-3.

Under the Housing Element Law, every community in California is required to adopt, as part of its "general plan," a "housing element" that analyzes the community's low- and moderate- income housing needs, sets goals and quantified objectives for meeting those needs, and adopts a five-year program to implement the objectives. Gov. Code § 65583. Any "interested party" may seek judicial review of a housing

element, and "citizen groups may enjoin a project when the general plan either lacks a relevant element or the element is inadequate." *Buena Vista Garden Apartments Assn. v. City of San Diego Planning Dept.*, 175 Cal. App. 3d 289 (1985); CCP § 1085.

Petitioners challenged Amendment No. 1 on the following grounds, among others:

* That Duarte and its Redevelopment Agency had not made the required finding that the Redevelopment Project area was "blighted" at the time the Amendment was adopted, and that such a finding would not be supported by substantial evidence (J.A. 617-20 (First Cause of Action));

* That there was no substantial evidence to support the required finding that the project's tax increment financing would not cause a significant financial burden or detriment to any taxing entity (J.A. 623-24 (Fifth Cause of Action); see Health & Safety Code §§ 33367 (d) (12) (1990), 33457.1);

* That the Amended Plan failed to effectuate the purposes and policy of the Community Redevelopment Law with regard to expenditures on low- and moderate-income housing, in particular by failing to set aside at least 20 percent of the tax-increment revenues allocated to the Redevelopment Agency for deposit into a Low and Moderate Income Housing Fund (J.A. 624-26 (Sixth Cause of Action); see Health & Safety Code § 33334.2 (a));

* That the City's housing element in effect at the time of the Amendment's adoption was invalid for many reasons (J.A. 626-30 (Seventh Cause of

Action));

* That the findings by the City and its Redevelopment Agency concerning relocation and replacement housing were legally inadequate (J.A. 630-33 (Eighth, Ninth, and Tenth Causes of Action));

* That the City and its Redevelopment Agency would illegally expend tax-increment moneys allocated to the Agency unless they were enjoined from doing so and Amendment No. 1 was declared null and void (J.A. 637-38 (Fifteenth Cause of Action)).

B. The Consolidated Actions

Petitioners were not alone in challenging the validity of Amendment No. 1. Los Angeles County ("the County") and the Citrus Community College District ("Citrus"), both taxing entities that otherwise would receive property tax revenues to be paid to the Duarte Redevelopment Agency under the tax-increment financing provisions of the Amendment, brought separate suits challenging the amended Plan. The three suits were consolidated. App. A at 5. The County and Citrus joined Petitioners in challenging Duarte's failure to make a finding of "blight," but otherwise focused on the Amendment's financial impact on other taxing jurisdictions and did not challenge the housing aspects of the Plan (J.A. 5-29 and 548-568).

C. The Trial Court's Decision

The superior court, after a bench trial, ruled Amendment No. 1 invalid on several grounds. The court ruled that the City was required to make a finding of blight in invoking the tax-increment

provisions of Section 33670, even when that finding would apply to the area of a pre-existing project, and that it had not done so. App. D at 4-5; Cal. Const., Art. XVI, sec. 16; Health & Safety Code §§ 33354.5, 33352, 33367 (d), 33457.1. The court also held the redevelopment plan invalid for failure to meet the housing requirements of the Community Redevelopment Law. Duarte could not make the requisite findings that the amended plan would promote the general welfare and effectuate the purposes of the Community Redevelopment Law, the court held, because the City's Redevelopment Agency had failed to set aside required moneys for the development of low- and moderate-income housing and had otherwise failed to comply with its housing obligations under the CRL. App. D at 5-7. The court further found Duarte's Housing Element invalid, and Amendment No. 1 consequently invalid for failure to be consistent with a valid housing element. App. D at 9-14.

In addition, the court found a lack of substantial evidence to support the City's finding that the tax-increment financing "will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area." App. D at 7-8; Health & Safety Code § 33367 (d) (12). The court further held that the City and Agency had "violated the purposes of the Community Redevelopment Law" in adopting the Amendment, since the evidence produced at the trial "reveals that the purpose of the Amendment is to capture tax increment away from the Citrus College, the County and other taxing entities in the absence of blight and without substantial justification." App. D at 8-9.

Accordingly, the court entered judgment declaring Amendment No. 1 "void and of no effect." App. E at 3. It also permanently enjoined the City and Agency from "taking any action to implement or carry out the Amendment, and from receiving any tax increment revenues . . . attributable to the Amendment." App. E at 3.

The City and its Redevelopment Agency appealed. Petitioners, who had moved to include in the judgment a writ of mandamus compelling Duarte to bring its housing element into compliance with state law within 120 days, cross-appealed from the denial of their motion. App. A at 4-5.

D. The Settlement

After completion of appellate briefing, and five days before oral argument, the City, the Redevelopment Agency, the County, and Citrus, without consulting Petitioners or giving them prior notice, reached a settlement. The settlement provides for a division among the settling parties of the increased property tax revenues resulting from the Redevelopment Project. App. A at 5 n.2. The parties to the settlement then filed with the Court of Appeal, on February 3, 1994, a "Joint Application and Stipulation for Partial Dismissal of Appeal with Prejudice, Reversal of Judgment, and Remand to the Superior Court for Vacation of Judgment and Entry of New and Different Judgment in Favor of Appellants." App. A at 4; see *Neary v. Regents of the University of California*, 3 Cal.4th 273 (1992).[2]

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[2] Counsel for Duarte described the settlement as follows: "Duarte, Citrus, and the County have agreed

The Court of Appeal then requested the parties to submit, the next day, letter briefs addressing which issues on appeal were rendered moot by the settlement.

Petitioners acknowledged that one minor issue, which they had no interest in raising, was rendered moot. Petitioners' Letter Brief of Feb. 4, 1994, at 1. Duarte contended that Petitioners' Fifth Cause of Action, alleging a lack of substantial evidence that Amendment No. 1 would not cause a significant financial burden or detriment to County or Citrus, was rendered moot. Duarte's Letter Brief of Feb. 4, 1994, at 3. Duarte further contended that Petitioners "do not have standing to second-guess the County and Citrus on this subject." *Id.* Duarte did not challenge Petitioners' standing with respect to any other issue. Duarte did note, as did Petitioners, that since the actions were consolidated there could be only a single final judgment. *Id.* So if the court affirmed the trial court's judgment in the Allen and Feinner case, "the settlement reached by Duarte, Citrus, and the County cannot be enforced." *Id.*

E. The Court of Appeal's Opinion

The opinion of the Court of Appeal was issued April 14, 1994, and stamped "Not To Be Published."

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that the trial court judgment should be reversed and the matter remanded for entry of a new and different judgment validating Amendment No. 1." Letter Brief dated Feb. 4, 1994, at 2 (emphasis in original).

App. A at 1, 24.[3] The court noted that Duarte, at oral argument, had "stated its belief that the standing issue went only to the fifth cause of action" (alleging a significant financial burden on the taxing agencies). App. A at 12. The court ruled, however, that "the standing issue envelops the entire action" (App. A at 12) and that "Allen and Feinner did not have standing to bring the action." App. A at 6.

The Court of Appeal reviewed the case law under Code of Civil Procedure section 863, which authorizes "any interested person" to bring a validation action if the agency fails to do so. It first considered *Sweetwater Valley Civic Assn. v. City of National City*, 18 Cal. 3d 270 (1976). In that case the California Supreme Court reviewed, and unanimously rejected, the finding of a city and its redevelopment agency that an area included in a redevelopment plan was blighted. The court in *Sweetwater* described the plaintiff association as "a group of 600 taxpayers, residents, and property owners of Sweetwater Valley." 18 Cal.3d at 273. The court did not discuss standing, stating that Code of Procedure section 863 "permits any 'interested person' to bring the action" if the agency does not. *Id.* at 277.

The Court of Appeal concluded that *Sweetwater* "did not consider the issue of standing and thus cannot

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[3] Under the California Rules of Court, an unpublished opinion "shall not be cited or relied on by a court or a party in any other action or proceeding," with exceptions for law of the case, res judicata, collateral estoppel, and ancillary criminal or disciplinary proceedings. Rule 977 (a).

be invoked as authority on this point."[4]

The Court of Appeal next discussed *Card v. Community Redevelopment Agency*, 61 Cal. App. 3d 570 (1976). The court there, in affirming the invalidation of a city's ordinance amending a redevelopment plan, addressed the plaintiffs' standing as follows:

> The Agency also challenges the standing of plaintiffs to sue, but plaintiffs clearly are interested persons within the meaning of Code of Civil Procedure section 863 in view of the fact that each was subsequently stipulated to be a citizen, resident and taxpayer of the city and "a person interested in the matter of the amendments to the redevelopment plans for the Monterey Hills Project No. 1." *Id.* at 574-575 n.6.]

The Court of Appeal said of *Card*: "Given that

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[4] The court cited two cases. In *McDowell & Craig v. City of Santa Fe Springs*, 54 Cal. 2d 33 (1960), the court stated that "cases are not authority for propositions not considered." *Id.* at 38. The court in *McDowell* was referring to a question with which the cited court was "not . . . dealing" (*id.*) -- that is, a dictum -- not to a question (like standing in *Sweetwater*) that the court decided but did not discuss. The *McDowell* court stated in the sentence preceding the one quoted by the Court of Appeal: "It is elementary that the language used in any opinion is to be understood in the light of the facts and the issue then before the court." *Id.* The other cited case, *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035, 1044 n.5 (1993), handled *Sweetwater* as did the Court of Appeal here, also citing *McDowell*.

the plaintiffs were stipulated to be interested persons, their description as citizens and residents of the defendant city and 'taxpayers' on some undisclosed basis was superfluous and is of no assistance." App. A at 20.

The Court of Appeal turned to *Regus v. City of Baldwin Park*, 70 Cal. App. 3d 968 (1977). The court there, in ruling a redevelopment project invalid for lack of blight, held that the plaintiffs had standing both as "interested persons" under Section 863 and as taxpayers under Code of Civil Procedure Section 526a. *Id.* at 972. The individual plaintiffs in *Regus* were "residents and taxpayers" of the defendant city. *Id.* at 971. They also owned real property (outside the Project area) that had been assessed for taxes within the past year by Los Angeles County and other taxing agencies that levied taxes on property within the Project area. *Id.* The plaintiff unincorporated League was "composed of City residents." *Id.* No individual plaintiff or member of the League resided or owned property within the Project area. *Id.*

The *Regus* court, in holding that the plaintiffs had standing to bring both a validation action and a taxpayer's action, relied on *Sweetwater* and *Card, supra*. The court stated that the California Supreme Court in *Sweetwater*, "without discussion of standing," had "entertained a civic association's attack on a redevelopment project" where "plaintiff ownership of property within the project area was not alleged" and was unlikely. 70 Cal. App. 3d at 971-972. Likewise in *Card*, the court said, the stipulation "did not declare that plaintiffs owned property within the project area." *Id.* The court held that the *Regus* plaintiffs, "[a]s taxpayers of the City of Baldwin Park and of the

County of Los Angeles," had a "financial interest in the outcome of this proceeding" -- based on the diversion of tax revenues from the taxing agencies to which they paid taxes -- that "provides sufficient basis to give them standing." *Id.* at 972. The court further held that the plaintiffs, "as resident taxpayers of City and county," also had standing to bring a taxpayer's action under Code of Civil Procedure section 526a. *Id.*

The Court of Appeal determined that *Regus* "does not fully analyze the issue." App. A at 20. The court criticized *Regus* for not providing additional facts about the plaintiffs, such as "what kind of tax each plaintiff paid as a resident within the city" and "whether each plaintiff owned real property within the city." App. A at 20. After further criticism the court declared: "On balance, we conclude that *Regus* does not present a clear rule of law." App. A at 21.

Finally the court considered *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035 (1993).[5] The plaintiffs there, challenging a redevelopment plan of the City of Yorba Linda, alleged that they currently lived in Anaheim but were interested in moving to Yorba Linda. *Id.* at 1039. They further alleged that they

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[5] Another case discussed by the Court of Appeal, *Citizens Against Forced Annexation v. County of Santa Clara*, 153 Cal. App. 3d 89 (1984) (App. A at 16, 21), dealt with annexation rather than redevelopment. The case appears to go further than *Regus* in holding that an organization composed of residents of the affected county had standing to challenge annexations apparently anywhere in the county. 153 Cal.App.3d at 97-100.

each had paid a tax -- conceded to be sales tax -- to Yorba Linda within the prior year. *Id.* at 1039 and n. 2. One plaintiff also alleged ownership of property in Orange County (which includes both cities). *Id.* at 1040.

The court upheld dismissal of the action for lack of standing. *Id.* at 1038. "Both plaintiffs are residents of Anaheim, not Yorba Linda," the court stated (*id.* at 1043). The court noted the contrast with *Regus*, where the plaintiffs "resided in the city covered by the redevelopment project." *Id.* at 1044. "Regus does not state a party has standing where he or she is merely a county taxpayer," the court continued. *Id.* With regard to the plaintiffs' taxpayer's action under Code of Civil Procedure section 526a, the court noted that standing requirements under that provision had been "liberally construed," but said a plaintiff nonetheless "must establish he or she is a taxpayer." *Id.* at 1047. The plaintiffs admitted they had paid to Yorba Linda only a sales tax (*id.* at 1038 n.2), and "a sales tax is a levy imposed on the retailer, not the consumer," the court said. *Id.* at 1047.

The Court of Appeal asserted that "Allen and Feinner allege little more than did the plaintiffs in *Torres*." App. A, at 19. Like the plaintiffs in *Torres*, Allen and Feinner "are lower income persons who live in rental housing," the court said. *Id.* Moreover, Feinner "receives Aid to Families with Dependent Children and qualifies to receive county supported health services." *Id.* Allen and Feinner "[b]oth paid `a tax' within the City of Duarte; they do not allege it was a tax assessed on real property located there." *Id.* The court acknowledged that "[u]nlike the *Torres* plaintiffs, Allen and Feinner are residents of the

defendant city." *Id.* It concluded, however, "that mere residency and the payment of an unspecified tax within the defendant city is insufficient to confer standing." *Id.*

The Court of Appeal also denied Petitioners standing to bring a taxpayer's action under Code of Civil Procedure section 526a. App. A at 23. Relying on *Torres*, the court declared that payment of a sales tax "does not confer standing" (App. A at 23).[6] After noting once more that Petitioners "alleged that they are lower income persons," the court stated: "They did not specify that they had paid a property tax within the City of Duarte and no evidence was offered at trial that either had paid such a tax." *Id.* The court held that Petitioners lacked standing to bring a taxpayer's action. *Id.* at 23.

The Court of Appeal thus reversed the trial court's judgment with respect to Petitioners. *Id.* at 23-24. With respect to the other parties, it dismissed the appeal and remanded the matter to the trial court for further proceedings consistent with the agreements of the parties, citing *Neary v. Regents of the University of California*, 3 Cal. 4th 273 (1992)). App. A at 24. The final page of the court's opinion, like the first page, bears the stamp, "Not To Be Published." *Id.*

Petitioners filed a timely Petition for Rehearing. In it they challenged the Court of Appeal's denial of their standing as a violation of their right to the Equal

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[6] Petitioners alleged having paid "a tax to the City." Complaint, par. 9, J.A. 617. Unlike *Torres*, nothing in the record here establishes that this was a sales tax.

Protection of the laws under the Fourteenth Amendment. Petition for Rehearing at 3, 12-17. The Petition also challenged the Court of Appeal's denial of standing as contrary to existing precedent. *Id.* at 2, 9-11. The Petition was denied on May 16, 1994. Petitioners then filed a timely Petition for Review with the California Supreme Court, raising these and other issues. The Petition was denied on July 13, 1994.

## REASONS FOR GRANTING THE WRIT

The California Court of Appeal has ruled that Petitioners did not have standing to challenge Duarte's redevelopment plan, through either a "validation action" under Section 863 of the Code of Civil Procedure or a taxpayer's action under Section 526a of that Code, because Petitioners did not pay a tax on real property located in Duarte. This decision, denying Petitioners access to the courts because they do not own land, violates Petitioners' rights to the Equal Protection of the Laws and to Due Process of Law under the Fourteenth Amendment.[7]

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[7] The Court of Appeal suggested that "[t]wo recent events," the settlement by the governmental parties and a certification by the California Department of Housing and Community Development that Duarte's housing element now conformed to state law, perhaps mooted the case and somehow supported the court's decision that Petitioners lacked standing to bring the action. App. A at 4-5, 22. The suggestion is wrong. Despite those events the following issues, among others, remain in the case:

First, Section V of the Trial Court's Decision (App. D at 5-7), finding that Duarte's Redevelopment Agency

1. The Court of Appeal's opinion is clear in denying standing to Petitioners, with respect to both the validation action authorized by Code of Civil Procedure Section 863 and the taxpayer's action authorized by Code of Civil Procedure Section 526a, because Petitioners did not pay a tax on real property located in Duarte. The court states with regard to the Section 863 action: "Both [Petitioners] paid 'a tax'

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had failed to set aside 20 percent of the taxes allocated to it for at least the fiscal years 1989-90 and 1990-91, as required by the Community Redevelopment Law, is not affected by either event. Second, Section X of the Trial Court's Decision (App. D at 9-14), finding the City's Housing Element deficient, is not mooted by either event. As the Trial Court noted (*id.* at 9), state law requires that the City's general plan (including its Housing Element) have been in compliance with law at the time the Redevelopment Plan was adopted, or else the Plan was invalid *ab initio*. *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531 (1990). Further, the DHC's approval of the new Housing Element is not presumptively correct, but is only entitled to some deference in a court's determination of the new Element's validity. See Government Code § 65585 (a), (d)-(f); *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698, 701-702 (1981). Third, Sections III, IV, VIII, and IX of the Trial Court's Decision (App. D at 4-5, 8-9) are not addressed by either event. These sections involve the basic invalidity of the Redevelopment Plan as a result of the City's failure to make the required finding of blight (and related findings). In sum, this case is not moot; the Court of Appeal has only tried to make it so by ejecting Petitioners from it.

within the City of Duarte; they do not allege it was a tax assessed on real property located therein." App. A at 19. The court states with regard to the Section 526a action: "They [Petitioners] did not specify that they had paid a property tax within the City of Duarte and no evidence was offered at trial that either had paid such tax." App. A at 23.

Petitioners in bringing this action were exercising their First Amendment right to petition their Government for a redress of grievances. As this Court has stated: "Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

Petitioners had initially sought to exercise their right to petition without involving the courts, by submitting to the city council of Duarte their objections to the amended Redevelopment Plan. See App. D at 4. Those objections were based on the grounds ultimately put forth in this action. When the city council rejected the objections, Petitioners resorted to the only remaining avenue by which they might petition for a redress of their grievances: a court action to adjudicate the validity of Duarte's Redevelopment Plan.

This is an avenue deliberately made available by the Legislature and the law of California. Section 863 of the Code of Civil Procedure provides that, if a public agency has not itself brought a proceeding to "validate" action it has taken, "any interested person" may do so. In addition, the California Community Redevelopment Law specifically provides for the

bringing of such actions to test the validity of redevelopment plans. Health & Safety Code § 33501. Further, Section 526a of the Code of Civil Procedure authorizes a "taxpayer action" to prevent the illegal expenditure of municipal funds, an action that may be brought by any "citizen resident" in the municipality who within the previous year has paid "a tax therein." The California Supreme Court has said of Section 526a:

> The primary purpose of this statute, originally enacted in 1909, is to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." [Citation omitted.]
>
> California courts have consistently construed section 526a liberally to achieve this remedial purpose. . . .

*Blair v. Pitchess*, 5 Cal.3d 258, 267-268 (1971).

Consistently with the language and the evident intent of these statutes, there appears to be no California redevelopment case, other than the present one, in which standing has been denied to plaintiffs who were residents and taxpayers, or even residents alone, of the municipality undertaking the Project. This can be seen in the opinion of the Court of Appeal. App. A at 13-18. In *Sweetwater Valley Civic Assn. v. City of National City*, 18 Cal. 3d 270 (1976), the California Supreme Court did not question the standing -- though this is an issue the court will raise *sua sponte* -- of any of "a group of 600 taxpayers, residents, and property owners of Sweetwater Valley."

*Agency*, 61 Cal. App. 3d 570 (1976), the court held that the plaintiffs had standing under Section 863 because each was stipulated to be "a citizen, resident and taxpayer of the city" and a "person interested" in the redevelopment plan. *Id.* at 574-575. Nothing was said about owning property. In *Regus v. City of Baldwin Park*, 70 Cal. App. 3d 968 (1977), the court held squarely that the individual plaintiffs had standing under Section 863 "[a]s taxpayers of the City of Baldwin Park and of the County of Los Angeles," and under Section 526a "as resident taxpayers of City and county." 70 Cal. App. 3d at 972. The *Regus* court also accorded standing to an unincorporated association "composed of City residents." *Id.* at 971. Finally, in *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035 (1993), standing to challenge the redevelopment plan of Yorba Linda was denied to the two plaintiffs who were "residents of Anaheim, not Yorba Linda." *Id.* at 1043.

2. The apparently unique denial of standing to these Petitioners,[8] on the ground that they do not pay

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[8] Since the opinion of the Court of Appeal is "Not To Be Published," it presumably will not be a precedent for future decisions in California. See Cal. Rule of Ct. 977 (a); *supra* note 3. At the same time the opinion deviates from the preexisting law (a fact that should have led to its publication, under the standard providing for publication of an opinion that "creates an apparent conflict in the law," Cal. Rule of Ct. 976 (b) (2)). The rule applied by the Court of Appeal thus departs from past cases and will not be applied to future ones -- it is being applied to Petitioners alone. Petitioners submit that this treatment "breaches the principle that litigants in similar situations should be treated the same, a

taxes on real property in Duarte, denies them access to the courts in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), this Court held that Due Process prohibited a State from imposing court fees and costs for the filing of divorce actions upon indigent welfare recipients who were unable to pay those amounts. Subsequently, in *United States v. Kras*, 409 U.S. 434 (1973), the Court distinguished a $50 filing fee for obtaining a discharge in voluntary bankruptcy. The majority in *Kras* emphasized that "[r]esort to the court" was not Kras's "sole path to relief" (*id.* at 446), as it had been for the persons seeking divorce in *Boddie*, and further noted that the $50 fee could be paid in installments over six months, producing a weekly average payment of $1.92. *Id.* at 449. Again in *Kaarmas v. Dickinson v. Public Schools*, 487 U.S. 450 (1988), where the Court upheld against Equal Protection attack a school bus user fee, it noted that this was not a requirement, like the one in *Boddie*, that "barred indigent litigants from using the judicial process in circumstances where they had no alternative to that process." *Id.* at 460.

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fundamental component of *stare decisis* and the rule of law generally," *James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439, 2444 (1991) (opinion of Souter, J.) -- and thus denies to Petitioners the Equal Protection of the laws. See also *County of Los Angeles v. Kling*, 474 U.S. 936, 937 & n.1 (1985) (Stevens, J., dissenting); Weaver, *The Precedential Value of Unpublished Opinions*, 39 Mercer L. Rev. 477, 477 n.1 (1988); Robel, *The Myth of the Disposable Opinion*, 87 Mich. L. Rev. 940, 948 (1989).

In this case, Petitioners had "no alternative" to the judicial process. Petitioners did first invoke the political process to assert their objections to Duarte's Redevelopment Plan, by presenting those objections to the city council. When their efforts were rejected, Petitioners were left with resort to the courts as their "sole path to relief" in testing the Plan's validity. Indeed, Petitioners were required to bring their action within 60 days after adoption of the Redevelopment Plan, or be forever barred from challenging its validity. Health & Safety Code § 33500; Code of Civil Procedure § 863; *Sweetwater, supra*, 18 Cal.3d at 277.

Moreover, the requirement that the Court of Appeal has imposed on Petitioners, as a barrier to their access to the courts, is nothing like a $50 fee that can be paid at the rate of $1.92 per week. It is a requirement of land ownership. Under the court's decision, Petitioners had to go out and buy a piece of land in Duarte before being allowed to test Duarte's Redevelopment Plan in court. This is not a requirement that lower-income citizens can realistically be expected to meet. This case thus is governed by *Boddie*, in view of the implacable burden the Court of Appeal has imposed on Petitioners' First Amendment right of access to the courts.

3. Even when the Court of Appeal's ruling is subjected to the "rational relationship" test under the Equal Protection Clause (see *Kadrmas, supra*, 487 U.S. at 4582), it cannot be sustained. There is no rational relationship between a requirement of property ownership in the city and standing to challenge the city's Redevelopment Plan.

In *City of Phoenix v. Kolodziejski*, 399 U.S. 204

(1970), this Court held that a State could not, consistently with the Equal Protection Clause, restrict the vote to real property taxpayers, even in elections to approve the issuance of general obligation bonds. The Court declared that,

> . . . although owners of real property have interests somewhat different from the interests of nonproperty owners in the issuance of general obligation bonds, there is no basis for concluding that nonproperty owners are substantially less interested in the issuance of these securities than are property owners.

399 U.S. at 212. See also *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (invalidating provisions of a Louisiana law granting only property taxpayers the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility); *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969) (invalidating provisions of a New York law limiting the vote in school district elections to persons who either have children enrolled in local public schools or own, or lease, taxable real property within the district).

The rational relationship that the Court found lacking in *City of Phoenix* is even more clearly lacking here. First, just as the Court noted "all residents of Phoenix, property owners and nonproperty owners alike, have a substantial interest in the public facilities and the services available in the city and will be substantially affected by the ultimate outcome of the bond election" (399 U.S. at 209), all residents of Duarte will be substantially affected by the Redevelopment Plan. Indeed, given the emphasis of

California's redevelopment law on expanding the supply of low- and moderate-income housing,[9] Petitioners and other lower-income persons who lack adequate housing can be said to have a greater interest in the Redevelopment Plan than most property owners.

Second, there is no distinction between property- and non-property - owning residents of Duarte with respect to their contributions to the tax revenues of Duarte's Redevelopment Agency. No property tax revenues from property outside the Project area are allocated to the Agency. Health & Safety Code § 33670. Hence property taxpayers outside the Project area, to whom the Court of Appeal would accord standing (App. A at 19, 23), make no property tax contribution to the Project and thus have no greater interests than Petitioners in this regard.[10]

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[9] *See, e.g.*, Health & Safety Code § 33071: "The Legislature finds and declares that a fundamental purpose of redevelopment is to expand the supply of low- and moderate-income housing, . . . ." See also *id.* §§ 33334.2, 33334.3, 33334.6, 33413.

[10] In *Phoenix*, the Court declared that limiting the franchise to property owners would be unjustified even in municipalities that look only to property tax revenues for servicing general obligation bonds, since "a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the tenant rather than the landlord . . . ." 399 U.S. at 210.

Third, the Court of Appeal's holding presumably would confer standing also on nonresident property taxpayers of Duarte. App. A at 19, 23. Such nonresidents are likely to have less interest in the Redevelopment Plan and its consequences than Petitioners and others who live in Duarte.

Fourth, one of the Petitioners, Laura Feinner, receives County-supported health services. App. A at 19. She is thus particularly interested in the effects the Redevelopment Plan may have on tax revenues to the County.

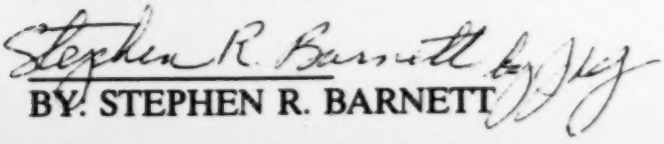
In sum, this Court's conclusion in *City of Phoenix* applies at least as strongly to this case. There is no basis for concluding, as the Court of Appeal did, that non-property - tax paying residents of Duarte, especially lower-income ones like Petitioners, have less interest in the Redevelopment Plan than do property taxpayers. The Court of Appeal's denial of Petitioners' access to the courts in this case thus violated their rights under the Equal Protection Clause.

## CONCLUSION

For the foregoing reasons, Petitioners respectfully request that a writ of certiorari be granted.

Respectfully submitted,

STEPHEN R. BARNETT
JONATHAN LEHRER-GRAIWER



BY: STEPHEN R. BARNETT

**APPENDIX A**

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

| | |
|---|---|
| CITRUS COMMUNITY COLLEGE DISTRICT, | ) No. B067380 |
| Plaintiff and Respondent, | ) (Super.Ct.No. ) ) BC007801) |
| v. | ) |
| REDEVELOPMENT AGENCY OF THE CITY OF DUARTE, et al., | ) |
| Defendants and Appellants. | ) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard C. Hubbell, Judge. Reversed and Dismissed.

Rutan & Tucker, Dan Slater and Jeffrey M. Oderman for Defendants and Appellants.

De Witt W. Clinton and Manuel A. Valenzuela for Plaintiff and Respondent City of Los Angeles.

Wagner, Sisneros & Wagner and T.A. Wagner for Plaintiff and Respondent Citrus Community College District.

John E. Rittmayer and Jonathan Lehrer-Graiwer for Plaintiffs and Respondents Alice Allen and Laura Feinner.

## INTRODUCTION

On May 31, 1988, the Duarte City Council approved a redevelopment plan (Plan) for the Rancho Duarte Phase III Redevelopment Project. At that time, the Plan did not include the tax increment financing provisions authorized under Health and Safety Code Section 336700.[1] Such provisions are optional and may be added later by amending an existing plan. (§ 33457.) They allow tax monies resulting from any increase in the assessed valuation of property within the project area to be placed in a special fund for repayment of the indebtedness incurred in financing that project, while the taxing agency continues to receive "the same amount of money it would have realized under the assessed valuation existing at the time the project was approved. . . ." (Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 259.)

In March 1989, after having expended more than $4 million to acquire about 30 percent of the real property covered by the Plan, Duarte determined that the cost of the project would substantially exceed previous estimates. Duarte notified the public and Los Angeles County, its flood control district, public library, and consolidated fire protection district (collectively County), and Citrus Community College District (Citrus) of its intent to amend the Plan to include section 33670 tax increment financing provisions (Amendment). (§ 33344.5.) Duarte stated that "[o]ther aspects of the Redevelopment Plan and Project Area are not proposed to be changed,

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[1]All statutory references are to the Health and Safety Code unless otherwise indicated.

modified or extended by the Amendment, except as necessary to provide for the collection of tax increment revenues."

On May 29, 1990, County submitted its written objections to the proposed Amendment, including that "[t]he tax increment financing provisions of the Amendment will cause a significant financial burden and detriment on the County by depriving the County of its share of the property taxes which are needed for the continued provision of service to the area" and that Duarte had failed to make a current finding that the geographical area included in the Plan was "blighted."

On June 26, 1990, Duarte approved its Ordinance No. 666, thereby adopting the Amendment.

In a consolidated action, County, Citrus, and two private citizens, Alice Allen and Laura Feinner, all respondents herein, challenged the validity of the amendment on several grounds and requested declaratory and injunctive relief and the issuance of a writ of mandamus to compel Duarte to reconform its underlying housing element to comply with state law.

Trial was held and the court took the matter under submission. The court issued a 14-page statement of decision and granted judgment in favor of respondents. The judgment voided the Amendment and permanently enjoined Duarte from implementing it. Allen and Feinner moved to set aside and vacate the judgment and substitute a new judgment which would include the issuance of a writ of mandamus to compel Duarte to bring its housing element into compliance with state law within 120 days. The court

denied the motion. Duarte's appeal and Allen and Feinner's cross-appeal, based on the denial of their motion, followed.

Two recent events impact this case. First, Duarte has modified its housing element to conform to state law, as certified by the California Department of Housing and Community Development. Thus, we dismiss Allen and Feinner's cross-appeal, which sought a new judgment requiring modification of the housing element.

Second, on February 3, 1994, Duarte and County filed a joint application and stipulation for partial dismissal of the appeal with prejudice, reversal of judgment, and remand to the superior court for vacation of judgment and entry of a new and different judgment in favor of Duarte. This step was based on a settlement agreement between Duarte and the County respondents and a separate agreement between Duarte and Citrus[2] Allen and Feinner did

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[2] With respect to County taxing entities flood control district, library, and fire district, the settlement agreement provides that all of their proportionate share of the expected increased tax revenues from the amended redevelopment plan will be passed through to them, though the transfer of some monies may be deferred for use by Duarte under certain specified circumstances. The agreement passes through a portion of County's share, deferring payment of the balance under specified circumstances. Duarte is required to repay all retained monies and accrued interest. The agreement also provides that a percentage of any monies diverted to Duarte from County or its taxing entities shall be set aside for low-

not join in the application and stipulation. Duarte acknowledges that there can be only one judgment entered because the actions were consolidated (Committee for Responsible Planning v. City of Indian Wells (1990) 225 Cal.App.3d 191, 195), the practical effect of which is that it cannot have a final judgment validating the Amendment with respect to County and another invalidating the Amendment with respect to Allen and Feinner. This court went forward with the scheduled oral argument on February 8, 1994, in conjunction with our review of the record, to ascertain what issues remained for consideration. We conclude that Allen and Feinner did not have standing to bring the action. We reverse the judgment as to Allen and Feinner and order the trial court to vacate the judgment with respect to Allen and Feinner. Pursuant to the agreements reached between County, Citrus and Duarte, we dismiss the appeal and remand the matter to the trial court for further proceedings consistent with the agreements of the parties. (Neary v. Regents of University of California (1992) 3 Cal.4th 273.)

## DISCUSSION

In their first 12 causes of action, Allen and Feinner asserted that Duarte had either failed to make findings as required by §33367 or that the findings

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and moderate-income housing in compliance with the CRL. The separate agreement with Citrus provides for a transfer of to percent of its share of tax increment revenues, less that required statutory set aside for low-and moderate-income housing, resulting in a net transfer of 48 percent.

made were not supported by substantial evidence.[3]

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[3] Former section 33367 provides in pertinent part: "The ordinance shall contain all of the following: [¶] . . . . [¶] (d) The findings and determinations of the legislative body that: [¶] (1) The project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part. [¶] (2) The redevelopment plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare. [¶] . . . . [¶] (4) The redevelopment plan conforms to the general plan of the community. [¶] (5) The carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this part. [¶] . . . . [¶] (7) The agency has a feasible method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area. [¶] (8) There are, or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to the displaced families and persons and reasonably accessible to their places of employment. [¶] (9) All noncontiguous areas of a project area are either blighted or necessary for effective redevelopment and are not included for the purpose of obtaining the allocation of taxes from the area pursuant to Section 33670 [provision for division

The 13th cause of action alleged that Duarte had

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of taxes generated by taxable property in redevelopment project area] without other substantial justification for their inclusion. [¶] (10) Inclusion of any lands, buildings, or improvements which are not detrimental to the public health, safety, or welfare is necessary for the effective redevelopment of the area of which they are a part; that any area included is necessary for effective redevelopment and is not included for the purpose of obtaining the allocation of tax increment revenues from the area pursuant to Section 33670 without other substantial justification for its inclusion. [¶] (11) The elimination of blight and the redevelopment of the project area could not be reasonably expected to be accomplished by private enterprise acting alone without the aid and assistance of the agency. [¶] (12) The effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area. This finding shall only be required when the project is financed in part or in whole from revenues derived from the allocation of taxes pursuant to Section 33670. [¶] (e) A statement that the legislative body is satisfied that permanent housing facilities will be available within three years from the time occupants of the project area are displaced and that pending the development of the facilities, there will be available to the displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement." (Stats. 1984, ch. 147, § 12, pp. 506-508.)

failed to produce an adequate report to accompany the Plan (§ 33352). They also sought declaratory and injunctive relief, denominated as their 14th and 15th causes of action, respectively.[4] Allen and Feinner challenged the Project by purporting to bring both a validation action, citing section 33501 and Code of Civil Procedure section 863, and a taxpayer's action to enjoin illegal municipal expenditures, citing Code of Civil Procedure section 526a.[5]

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[4] Allen and Feinner's original complaint, filed August 27, 1990, and their first amended complaint, filed June 18, 1991, list identical causes, of action, set forth in virtually identical language.

[5] At the time Allen and Feinner commenced their action, section 33501 provided: "An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine [the validity of a redevelopment plan], including . . . the legality and validity of all proceedings theretofore taken for or in any way connected with . . . the adoption of the redevelopment or renewal plan. . . " (Stats. 1965, ch. 1665, § 40, p. 3788.) This section also applies to redevelopment plans as amended. (Card v. Community Redevelopment Agency (1976) 61 Cal.App.3d 570, 574, fn. 5.)

Code of Civil Procedure section 863 provides: "If no proceedings have been brought by the public agency pursuant to this chapter, any interested person may bring an action within the time and in the court specified . . . to determine the validity of such matter . . . " (Emphasis added.)

Duarte demurred and argued that Allen and Feinner did not have standing to allege a significant financial burden on the taxing agencies, plaintiffs' fifth cause of action.[6] A minute order reflects that the trial

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Code of Civil Procedure section 526a provides: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ..."

[6] The operative paragraphs of the fifth cause of action read: "43. Section 3(g) of Ordinance No. 666 purports to contain a finding that the increased tax increment financing any taxing agency deriving revenues from the Project Area. This finding is not supported by substantial evidence. [¶] 44. The City has abused its discretion in failing to consider the financial impacts of the tax allocation and bonding limits adopted by the Redevelopment Plan on the ability of Los Angeles County and other agencies to provide public and social services, particularly to persons and families of low and moderate income. Among other things, the City has failed to fully consider the impact of the Jarvis-Gann Initiative and the fact that taxing agencies are deprived of substantial tax revenues as a result of the Redevelopment Plan and that they are restricted in their ability to raise additional tax revenues, as a result of said initiative, in

court rejected the argument, citing Code of Civil Procedure section 863 and Regus v. City of Baldwin Park (1977) 70 Cal.App.3d 968 (discussed below). In its answer, Duarte again raised this issue as an affirmative defense, repeating its assertion with respect to the fifth cause of action, and, in addition, asserting that Allen and Feinner did not have standing to request declaratory relief or an injunction to prevent the contemplated expenditure of public funds. Duarte again argued the issue in its trial brief and cites the argument in its brief on appeal.

Allen and Feinner stated in their first amended complaint that they are lower income residents of the City of Duarte who pay housing rent in excess of fifty percent of their gross monthly incomes and are "beneficially interested in the enforcement of [Duarte's] public duties. . . ." They asserted that the alleged diversion of taxes would "decrease the funds available to Los Angeles County for social services, including health and welfare benefits to lower income persons and families." They further alleged that they had paid "a tax" to the City of Duarte within one year of the commencement of this action.

The record further discloses that Allen and Feinner agreed in their opposition to a motion for summary adjudication of issues by Duarte that it was undisputed they are lower income residents of the City of Duarte. Also, Feinner declared that county provided her Aid to Families with Dependent Children

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order to compensate for the lost revenues. [¶] 45. Consequently, the Redevelopment Plan and Ordinance No. 851 approving and adopting it, are null and void."

and that she qualified to receive medical care at county hospitals and clinics should the need arise.

At oral argument, in response to questions from the bench, Duarte stated its belief that the standing issue went only to the fifth cause of action, in which Allen and Feinner alleged that the Amendment would result in a significant financial burden on the taxing agencies. Our review of the statutes and case law demonstrates that the standing issue envelops the entire action, thus leading to the reversal of the judgment with respect to these respondents and dismissal of the appeal.[7]

Standing to bring validation action (Code Civ. Proc. §863):

Under Code of Civil Procedure section 367, "[e]very action must be prosecuted in the name of the real party in interest. . . ." (Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035, 1040.) "Generally, a plaintiff must show he or she or those he or she properly represents have either suffered or are

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[7] Shortly before oral argument, Allen and Feinner requested judicial notice of a photocopy of what purports to be a letter dated November 1, 1988, from Elizabeth G. Hill, California Legislative Analyst, to State Senator Robert Presley, Chairman, Senate Appropriations Committee, regarding the replacement of revenues lost to public schools as a result of the CRL. The request is denied on the ground that the proffered evidence does not constitute an official act of the California Legislature. (Evid. Code, § 452, subd. (c).)

threatened with an injury of sufficient magnitude that it is reasonably assured the lawsuit will provide an adequate presentation of all relevant facts and issues. [Citation.]" (Id. at p. 1041.) As noted (fn. 5, ante), a public entity itself may bring an action to determine the validity of its redevelopment project. (Code Civ. Proc., § 863; § 33501.) Should it elect not to do so, "any interested person may bring an action . . . to determine the validity of such matter." (Emphasis added; Code Civ. Proc., § 863; id. at p. 1042.) Thus, the issue is whether Allen and Feinner qualify as "interested" persons. As Torres v. City of Yorba Linda, supra, notes, few cases have discussed the term "interested person" as used in Code of Civil Procedure section 863.

In Sweetwater Valley Civic Assn. v. City of National City (1976) 18 Cal.3d 270, defendant made a finding under the CRL that a 130 acre area was "blighted." The area comprised a 103-acre golf course, in active operation and open to the public, and 27 unproductive acres; 115 acres were owned by a single party. The California Supreme Court determined that the blight finding was subject to judicial review under section 33501. (Id. at p. 277.) No issue regarding standing was considered. Plaintiff association was described as "a group of 600 taxpayers, residents, and property owners of Sweetwater Valley." (Id. at p. 273.) There is no indication whether Sweetwater Valley was a governmental entity, whether any part of the redevelopment area was located within Sweetwater Valley, or whether any member of the plaintiff association owned property in or otherwise had a direct relationship to the redevelopment project area. The only reference to Code of Civil Procedure section 863 came when the California Supreme Court noted

that "[a]lthough [Code of Civil Procedure section 860] provides for the agency to bring the action, section 863 of that code permits any 'interested person' to bring the action within 60 days if the agency does not." (Id. at p. 277.)

In Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570, defendant appealed the invalidation of a city ordinance amending a CRL redevelopment plan for a project area located within the City of South Pasadena. The only reference to Code of Civil Procedure section 863 is stated in a footnote: "The [defendant] also challenges the standing of plaintiffs to sue, but plaintiffs clearly are interested persons within the meaning of Code of Civil Procedure section 863 in view of the fact that each was subsequently stipulated to be a citizen, resident and taxpayer of the city and 'a person interested in the matter of the amendments to the redevelopment plans for the [project].'" (Id. at pp. 574-575, fn. 6, emphasis added.)

In Regus v. City of Baldwin Park, supra, 70 Cal.App.3d 968, plaintiffs challenged defendant's ordinance purporting to adopt a redevelopment plan pursuant to the CRL. The members of a plaintiff unincorporated association and individual plaintiffs were residents and "taxpayers" of defendant city. They resided and owned real property located solely outside the boundaries of the redevelopment project area. The county and other taxing agencies, all of which levied taxes upon property within the redevelopment area, had assessed taxes on these individuals' real property within one year of the filing of the action. (Id. at p. 971.) Regus determined that the individual plaintiffs had standing to bring a validation action, as

well as a taxpayer's action, citing Sweetwater Valley Civic Assn. v. City of National City, supra, 18 Cal.3d 270 and Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570. It noted that Sweetwater had "entertained" a civic association's attack on a redevelopment project where, although its members were taxpayers, residents, and property owners of Sweetwater Valley, there was no allegation that association members owned property within the project area, and where such ownership was unlikely because of the existence of a large landowner. The Regus court acknowledged that Sweetwater had not discussed standing. (Regus v. City of Baldwin Park, supra, 70 Cal.App.3d at pp. 971-972.) With respect to Card, Regus noted that the stipulation regarding standing did not include that the plaintiffs owned real property within the project area.

Regus concluded as follows: "We think it unlikely the Legislature intended to limit review of such projects to actions initiated by the agency itself or by residents of the project area, given the presumptively disadvantaged and blighted condition of a redevelopment project area, which may be largely vacant or in a state of disrepair and disuse. As taxpayers of the City of Baldwin Park and of the County of Los Angeles, plaintiffs have a financial interest in the outcome of this proceeding, in that the tax increment financing of the Project will divert tax revenues from the taxing agencies to which plaintiffs pay taxes to the treasury of the Redevelopment Agency. Such a financial interest is likely to motivate plaintiffs to prosecute the action vigorously and provides sufficient basis to give them standing. [Citation.]" (Id. at p. 972.)

In Citizens Against Forced Annexation v. County of Santa Clara (1984) 153 Cal.App.3d 89, plaintiff unincorporated organization (CAFA), as well as individual plaintiffs who were members of CAFA, challenged the validity of annexations of county territory to the City of San Jose. These annexations had been proposed and accomplished without elections under former Government Code section 35000 et seq. (Municipal Organization Act), which incorporated Code of Civil Procedure section 860 et seq. Defendants demurred on the ground that plaintiffs were not "interested persons" under section 863 and therefore lacked standing to bring the action.

The appellate court held that "plaintiffs who allege an interested relationship to particular annexed territories through land ownership, residency, or voter registration have standing under section 863 of the Code of Civil Procedure to challenge the annexations of those particular territories." (Id. at p. 95.) It concluded that CAFA also had standing as an "interested person" regarding the dismissed territories because of the nature of the organization: (l) it was an appropriate organization to function as a monitor for its members, i.e., to watch for and test the validity of annexation proceedings, especially given the brief 60-day statute of limitation (Code Civ. Proc., § 860); and (2) a direct relationship between some of CAFA's members and the dismissed territories had been alleged. (Id. at pp. 95-98.) The court also noted that a validation action is in the nature of a proceeding in rem, citing Code of Civil Procedure section 860, but that the right asserted by CAFA and its members with respect to annexations "is only the right to see that the government wielded its annexations power properly." (Id. at p. 98.)

In Torres v. City of Yorba Linda, supra, 13 Cal.App.4th 1035, two persons challenged defendant city's proposed amended redevelopment project, asserting in part that the diversion of taxes which would otherwise be paid to the county and other taxing entities would decrease the funds available to the county for social services, including health and welfare benefits for lower income persons and families in general and those benefits "utilized or likely to be utilized" by the plaintiffs. (Id. at p. 1039.) In their first amended complaint, plaintiffs asserted they were "beneficially interested" in the enforcement of the defendants' public duties. They alleged they were residents of another city but were interested in residing in defendant city if they could find decent, safe, sanitary and affordable housing. Each plaintiff had paid a sales tax to defendant city within one year before filing the action. One plaintiff alleged she and her family were classified as "lower income" and either used or were eligible to receive health and other social services funded by the county.

Plaintiffs indicated that, with permission of the court, they would further amend the complaint to allege that one of the plaintiffs was a property owner and property taxpayer in the county and that the alleged failures of the defendant to have an adequate housing element and land use regulations permitting development of affordable housing impacted the price of housing elsewhere in the county, preventing plaintiffs from having the opportunity to purchase affordable housing. During the pendency of the demurrer, plaintiffs moved for issuance of a writ of mandate invalidating the redevelopment plan and directing the defendants to correct the housing element of its plan. Among the exhibits submitted

with respect to this issue was an agreement between the defendants and the county and its fire, flood, and park districts which provided that 65 percent of the county's share and each district's entire share of the expected increased tax revenues from the amended redevelopment plan would be passed through by the defendants.

The trial court sustained the demurrer without leave to amend and determined that the motion for writ of mandate was moot.

The appellate court affirmed. It reviewed Sweetwater Valley Civic Assn. v. City of National City, supra, 18 Cal.3d 270, Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570, Regus v. City of Baldwin Park, supra, 70 Cal.App.3d 968, and Citizens Against Forced Annexation v. County of Santa Clara, supra, 153 Cal.App.3d 89. It concluded that plaintiffs did not have standing to challenge the defendants' redevelopment plan under section 863. It rejected plaintiffs' reliance on Sweetwater on the ground that the case did not consider the issue of standing. It noted that both plaintiffs lived in another city, did not pay property taxes in defendant city, and were not "otherwise beneficially interested in the area covered by the amended redevelopment plan." (Torres v. City of Yorba Linda, supra, 13 Cal.App.4th at p. 1043.) It found the allegations that one plaintiff owned real property and paid property taxes to the county, and that the other claimed she and her family used or were eligible for several social services partially funded by the county with property taxes rendered plaintiffs, "indistinguishable from most other county residents." (Id. at p. 1044; fn. omitted.) It dismissed plaintiffs'

reliance on Regus, noting that the case "does not state a party has standing where he or she is merely a county taxpayer." (Ibid.) Finally, the court found that plaintiffs' assertion that the redevelopment project would divert revenue from local taxing entities was questionable in that the complaint alleged the project was to be financed by issuing bonds secured by tax increment revenue. The court characterized the financing scheme as one which permitted the project to pay "for itself by taking advantage of increased property tax revenues generated by the project area's renovation. [Citations.]" (Ibid.)

In the instant case, Allen and Feinner allege little more than did the plaintiffs in Torres. Allen and Feinner are lower income persons who live in rental housing. Feinner receives Aid to Families with Dependent Children and qualifies to receive county supported health services. Both paid "a tax within the City of Duarte; they do not allege it was a tax assessed on real property located therein. They claim they are "beneficially interested" and assert that the diversion of the tax increment revenue would decrease funding for social services for lower income families, both of which claims are mere conclusions. Unlike the Torres plaintiffs, Allen and Feinner are residents of the defendant city. We conclude that mere residency and the payment of an unspecified tax within the defendant city is insufficient to confer standing.

Sweetwater Valley Civic Assn. v. City of National City, supra, 18 Cal.3d 270 did not consider the issue of standing and thus cannot be invoked as authority on this point. (McDowell & Craig v. City of Santa Fe Springs (1960) 54 Cal.2d 33, 38; Torres v. City of Yorba Linda, supra, 13 Cal.App.4th at p. 1044,

fn. 5.) In Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570, it was stipulated that each plaintiff was a "citizen, resident and taxpayer of the city and a person interested in the matter of the amendments to the redevelopment plans for the [project]. (Id. at pp. 574-575, fn. 6.) Given that the plaintiffs were stipulated to be interested persons, their description as citizens and residents of the defendant city and "taxpayers" on some undisclosed basis was superfluous and is of no assistance. (McDowell & Craig v. City of Santa Fe Springs, supra, 54 Cal.2d at p. 38.)

Regus v. City of Baldwin Park, supra, 70 Cal.App.3d 968, does not fully analyze the issue. Regus purports to rely, at least in part, on Sweetwater and Card. In addition, some facts about the plaintiffs which would aid in the analysis are not set forth: it is not disclosed what kind of tax each plaintiff paid as a resident within the city or whether each plaintiff owned real property within the city. The court rejects the idea of limiting standing to residents of the redevelopment project area (which appears to be a very narrow interpretation of the legislative intent), "given the presumptively disadvantaged and blighted condition" of such area, "which may be largely vacant or in a state of disrepair and disuse." (Regus v. City of Baldwin Park, supra, 70 Cal.App.3d at p. 972.) Of course, such an area could well have a high population of lower income residents vitally interested in housing and related matters, a possibility the Legislature appears to have considered in expressing its concern regarding alternative housing for residents when an area is razed. (§ 33367, subd. (d) (7), (8).)) The Regus court concludes that the plaintiffs have standing because they were deemed to have sufficient financial

interest to motivate them to prosecute their action vigorously since the project would divert tax revenues from entities to which plaintiffs' tax payments were distributed. On balance, we conclude that Regus does not present a clear rule of law.

Citizens Against Forced Annexation v. County of Santa Clara, supra, 153 Cal.App.3d 89, interpreting the validation procedure in conjunction with the annexation of land pursuant to the Municipal Organization Act (former Gov. Code, § 35000 et seq.), held that persons who alleged an "interested relationship" through land ownership, residency, or voter registration within the particular annexed territory had standing to challenge annexation of that territory, as did the unincorporated association that functioned as a monitor of annexation proceedings for its members. Allen and Feinner did not allege residency within the project area.

Finally, Torres v. City of Yorba Linda, supra, 13 Cal.App.4th 1035, concluded that allegations of payment of taxes on real property located within the county, a sales tax paid within defendant city, and a "beneficial interest" in the price of housing in the county and eligibility for county social services partially funded by county taxes were insufficient to confer standing.

In addition, Torres also questioned the assertion that funds would be diverted from the taxing entities because the project was to be funded by bonds secured by tax increment revenue. In the instant case, the recent settlement agreements between Duarte and County reflect that ultimately the County taxing entities will receive all tax increment revenues due

them, plus interest should monies be temporarily diverted. The agreement between Duarte and Citrus indicates that approximately half of the expected revenues will be diverted. Allen and Feinner failed to allege a specific beneficial interest in Citrus and how the diversion of tax increment funds would adversely impact them. Since the issue of standing may be raised at any time (Life v. County of Los Angeles (1990) 218 Cal.App.3d 1287, 1292, fn. 3), this recent development further undercuts Allen and Feinner's claim.

As stated in Harman v. City and County of San Francisco (1972) 7 Cal.3d 150: "'The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a . . . court, and not [o]n the issues he wishes to have adjudicated.' [Citation.] A party enjoys standing to bring his complaint into court if his stake in the resolution of that complaint assumes the proportions necessary to ensure that he will vigorously present his case. [Citation.] . . . we must determine standing by a measure of the 'intensity of the plaintiff's claim to justice.' [Citation.]" (Id. at p. 159.) Here, Allen and Feinner failed to allege any adverse impact of the amended redevelopment plan on their residency within the City of Duarte, nor did they offer any evidence of such impact at trial. In view of the fact that Duarte's housing element has since been declared to be in full compliance with state law, and the existence of the recent settlement agreements and application to dismiss the appeal with respect to County and Citrus, we conclude that Allen and Feinner do not have standing to bring a validation action.

Standing to bring taxpayer's action (Code Civ. Proc., 526a):

Allen and Feinner also purport to bring their action under the authority of Code of Civil Procedure section 526a (fn. 5, ante). As discussed in detail in Torres v. City of Yorba Linda, supra, 13 Cal.App.4th 1035, a sales tax is a levy on the retailer, not the consumer, and therefore does not confer standing to bring an action under this section. Allen and Feinner alleged that they are lower income persons living within the City of Duarte, one of whom owns tax assessed real property somewhere in the county. They did not specify that they had paid a property tax within the City of Duarte and no evidence was offered at trial that either had paid such tax. We conclude they lacked standing to bring a taxpayer's action.

## DISPOSITION

We reverse the judgment as to Allen and Feinner and order the trial court to vacate the judgment with respect to Allen and Feinner. Pursuant to the agreements reached between County, Citrus and Duarte, we dismiss the appeal and remand the matter to the trial court for further proceedings consistent with the agreements of the parties. (Neary v. Regents of University of California, supra, 3 Cal.4th 273.)

The respective costs on appeal are to be borne by each party.

NOT TO BE PUBLISHED

HASTINGS, J.

We concur:

WOODS (Arleigh), P.J.

KLEIN, (Brett) J.*

*Assigned by the Chairperson of the Judicial Council.

**APPENDIX B**

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE: 5/16/94

Legal Services Program
John E. Rittmayer
211 E. Walnut Street
Suite 221
Pasadena, CA. 91101 6423

RE: Allen, Alice
vs.
Duarte, City of Citrus Community College District
2 Civil B067380
Los Angeles NO. BC007801

THE COURT:

Petition for rehearing denied.

**APPENDIX C**

Second Appellate District, Division Four, No. B067380
S040075

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

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CITRUS COMMUNITY COLLEGE DISTRICT
Et Al., Respondents

v.

REDEVELOPMENT AGENCY OF THE CITY OF
DUARTE Et Al., Appellants

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Petition for review DENIED.
Request for judicial notice DENIED.

LUCAS
Chief Justice

## APPENDIX D

NO. BC 007 801
(Consolidated with BC 008 824
and BC 009 159)

In the Superior Court of the State of California
for the County of Los Angeles

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CITRUS COMMUNITY COLLEGE DISTRICT,
*Plaintiff,*

VERSUS

ALL PERSONS INTERESTED IN THE MATTER OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.
*Defendants.*

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(Statement of Decision)
Before
HUBBELL, Superior Court Judge.

The above-captioned consolidated cases challenging the validity of Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project and Ordinance No. 666 approving the Amendment, came on regularly for trial on January 27, 1992, in Department 21 of the Superior Court of the State of California for the County of Los Angeles, the Honorable Richard C.

Hubbell, presiding. The actions were filed pursuant to the Community Redevelopment Law ("CRL") (Cal. Health & Safety Code §§ 33000 et seq.)[1] and Code of Civil Procedure Section 860 et seq.

John J. Wagner of Wagner, Sisneros & Wagner appeared on behalf of Citrus Community College District ("Citrus College"), Plaintiff in LASC Case No. BC 007 801. De Witt W. Clinton, County Counsel of the County of Los Angeles, by and through Manuel A. Valenzuela, Deputy County Counsel appeared on behalf of the County of Los Angeles, Los Angeles County Flood Control District, Los Angeles County Public Library and Consolidated Fire Protection District of Los Angeles County (collectively, the "County"), Plaintiffs in LASC Case No. BC 008 824. Jonathan Lehrer-Graiwer and John E. Rittmayer appeared on behalf of Alice and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159. Jeffrey M. Oderman and Dan Slater of Rutan & Tucker appeared on behalf of Defendants.

The court having taken the above matter under submission on January 27, 1992 after a trial, and having read and considered all of the exhibits and considered the summation of counsel and the evidence produced by both sides on trial of the issues, now renders this statement of decision in favor of Plaintiffs.

## I. STANDARD OF REVIEW

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[1] Unless otherwise expressly indicated, all statutory references shall be to the California Health & Safety Code.

The standard of review applied by the Court in the review of the findings made by Defendants City of Duarte ("City") and Redevelopment Agency of the City of Duarte ("Agency") in adopting Amendment No. 1 to the Redevelopment Plan for the Rancho Duarte Phase III Redevelopment Project ("Amendment") was the substantial evidence test. (In Re Redevelopment Plan for Bunker Hill (1964) 61 Cal.2d 21; Fosselman's, Inc. v. City of Alhambra (1986) 178 Cal.App.3d 806; County of Santa Cruz v. City of Watsonville (1985) 177 Cal.App.3d 831.)

## II. EXHAUSTION ISSUE

A. The Court finds that the Los Angels County Flood Control District ("Flood") and Los Angeles County Public Library ("Library"), Plaintiffs in LASC Case No. BC 008 824, exhausted their administrative remedies afforded them under the CRL. (Redevelopment Agency v. Superior Court (Birbeck) (1991) 228 Cal.Ap.3d 1487.) This finding is based on the following facts 1) these two entities participated throughout the redevelopment process; 2) they provided information to Defendants (which information was used by Defendants in analyzing various reports); 3) the Board of Supervisors of the County of Los Angeles (their governing body) authorized and directed the County Counsel (their legal representative; See, Cal. Gov. Code § 27640 et seq., Los Angeles County Charter Art. IV, § 14) to oppose the Amendment at the public hearing held by Defendants; and, 4) the County Counsel filed written opposition on behalf of all the County taxing entities, including Library and Flood.

B. The Court also finds that Alice Allen and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159, exhausted required administrative remedies afforded them under the CRL. Plaintiffs verified Complaint Alleges that they delivered to the City Clerk on or about May 29, 1990, objections to the Amendment. Complaint in BC 009 159, paragraph 12. The allegation is verified by the administrative record which contains a letter of objection dated May 28, 1990 and received by the City of May 29, 1990 written by Plaintiffs counsel. [A.R. 365-367] That letter states on its face that it was submitted on behalf of the attorney's two clients, who are residents of the City. Defendants introduced no evidence the support their contention that the letter of objections submitted by Plaintiffs' attorney was not submitted on their behalf.

## III. FINDINGS OF BLIGHT

A. Defendant City was required to make blight findings under Sections 33367(d)(1) and 33367(d)(11) and include said findings in Ordinance No. 666 which approved the Amendment. (Ca. Const. Art. XVI, § 16; §§ 33354.5, 33352, 33367(d), 33457.1.) The existence of blight is a necessary pre-requisite to a redevelopment agency's right to obtain taxes under Section 33670. (Calif. Const. Art. XVI, § 16; Regus v City of Baldwin Park (1977) 70 Cal.App.3d 968, 982.) Consequently, Plaintiffs' causes of action challenging the validity of Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project ("Amendment No. 1") and ordinance No. 666 on the grounds that the City failed to make findings of blight and other related findings, were timely since they were filed within 60 days of the adoption of Ordinance No. 666. Section 33500.

B. Defendant City failed to make blight findings. Defendants' admitted that no blight findings were made.

## IV. FINDINGS ON THE INCLUSION OF NON-BLIGHTED AND NON-CONTIGUOUS AREAS

A. Defendant City was required to make findings under Sections 33457.1, 33367(d)(9) and 33367(d)(10), and include those findings in Ordinance No. 666.

B. Defendant City failed to make those findings.

## V. FINDINGS ON PROMOTING THE GENERAL WELFARE AND ON EFFECTUATING PURPOSES OF THE CRL

A. Defendant City was required to make findings under Sections 33457.1, 33367(d)(2) and 33367(d)(5), and include those findings in Ordinance No. 666.

B. The record before the Court does not contain substantial evidence to support those findings. Additionally, the findings contained in this Statement of Decision support the conclusion that Ordinance No. 666 would not promote the general welfare and that it would not effectuate the purposes of the CRL.

C. Defendant Agency has failed to file with the State Controller for fiscal years 1987-1988, 1988-1989 and 1989-1990, reports which contain information required in Sections 33080.1(c) and 33080.4. This finding is supported by the Declaration of William J. Murphy and by the Reports of the Department of Housing and Community Development entitled, Redevelopment Agencies in California: The Effect of Their Activities on Housing, Fiscal Years 1989-1990 and

1987-1988. Defendants did not introduce evidence that the Agency had in fact submitted the required information to the State Controller.

Additionally, the Agency has failed to set-aside at least 20% of the taxes allocated to it under Section 33670 into a Low and Moderate Income Housing Fund as required by Sections 333334.2 and 33334.6 of the CRL for at least fiscal years 1989-90 and 1990-91. The Agency's Annual Report for Fiscal year 1989-90 claims that the Agency made findings under Sections 33334.2(a)(1), 33334.2(a)(3) and 33334.6(d) and (e) for each of the City's seven redevelopment project areas. However, findings under Section 33334.6(d) and (e) were not available and therefore not vaid as to any of the City's redevelopment plans, except the David Addition Plan, because all of the other plans were adopted after 1976. Furthermore, the Agency adopted Resolution No. RA-264 on November 14, 1989 and Resolution No. RA-274 on November 13, 1990. Those resolutions made findings under Sections 33334.2(a)(1) and (a)(3) for the purpose of not setting aside any taxes allocated to the Agency into a Low and Moderate Income Housing Fund. All of those findings were invalid because the City's Housing Element, adopted September 26, 1989, which was in effect at those times, was invalid, as specified below, rendering the findings invalid. Additionally, the findings under Section 33334.2(a)(1) were inconsistent with that Housing Element which identified significant housing needs in the City for very low, low and moderate income households. Those violations of the CRL substantiate that the Agency has not been effectuating the purposes and policy of the CRL. Given the Agency's current violation of the CRL as to all seven of its redevelopment plant adopted prior to Amendment No. 1, as concluded in this Section, the

finding by the City that the redevelopment plan would effectuate the purposes and policy of the CRL is not supported by substantial evidence.

## VI. FINANCIAL BURDEN OR DETRIMENT

A. Library is not estopped from challenging the Amendment on the ground that it will suffer financial detriment. The January 22, 1990 letter relied upon Defendants, preceded Library's participation in the fiscal review process; a process which afforded all taxing entities an opportunity to fully and completely review the fiscal impact of the Amendment. (§§ 33352, 33353.3.) The fiscal review process authorized under Section 33353, involved review of information submitted by Defendants, a hearing on April 12, 1990 (§33353), and submission of a report to Defendant on or about May 10, 1990. (§33353.5.)

B. The record lacks substantial evidence to support the finding made by Defendant City pursuant to Section 33367(d) (12) that "[t]he effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area."

1. The Court finds that Defendants' actions thwarted effective review by the Fiscal Review Committee ("FRC") and that evidence produced by Plaintiffs throughout the process substantiates the claim that the Amendment will cause significant financial burden or detriment.

2. The record reveals that the FRC found that the assessed valuation of the project area since 1986-87 (approximately two (2) fiscal years before the ordinance

approving the original plan became effective) had increased by approximately 20 percent. The FRC conclusion that the taxing entities could reasonably expect to receive this or a substantial portion of this historical increase in the absence of redevelopment substantiates the claim that the Amendment would cause significant financial burden or detriment under Section 33012(b).

3. The FRC Report authorized by Section 33353.5(b) complies with the statutory requirements of the CRL and contains substantial evidence in and of itself to support a claim of significant financial detriment.

## VII. DEFENDANTS FAILED TO COMPLY WITH PROCEDURAL REQUIREMENTS

The written response and findings prepared by Defendant Agency to the County's written objections filed at the joint public hearing of May 29, 1990 ("Objections") did not meet the requirements set forth in Section 33363. The Court finds that the response, in part, failed to provide good faith, reasoned analysis.

## VIII. PURPOSES OF THE COMMUNITY REDEVELOPMENT LAW

Defendants City and Agency violated the purposes of the Community Redevelopment Law (§§33000 et seq.) in adopting the Amendment. The evidence produced at trial reveals that the purpose of the Amendment is to capture tax increment away from the Citrus College, the County and other taxing entities in the absence of blight and without substantial

justification. (Regus v. City of Baldwin Park (1977) 70 Cal.App.3d 968.)

## IX. NEED FOR PUBLIC PARTICIPATION

A. Defendant City was required to make a finding under Section 33457.1 and 33367(d)(11), and to include that finding in Ordinance No. 666.

B. Defendant City failed to make that finding.

## X. HOUSING ELEMENT

A. Defendant City was required to make a finding under Sections 33457.1 and 33367(d)(4), and to include that finding in Ordinance NO.666.

B. The General Plan of the City in effect at the time of the adoption of Ordinance No. 666 is the one against which the Amendment is to be adjudged for consistency. A housing element is a mandatory element of a general plan. (Cal. Gov. Code §65302(c).) The Housing element of the City in effect at the time of the adoption of the Amendment is the one adopted on September 26, 1989.

C. Sections 33331 and 33367(d)(4) required both that Ordinance No. 666 must have been consistent with the City's general plan in effect at the time of its adoption on June 26, 1990 and that such general plan must have been in compliance with state law. Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 537, 541, 544; Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 741-742; Neighborhood Action Group v. County of Calaveras

(1984) 156 Cal.App.3d 1176, 1184, 1187-1188; Camp v. Board of Supervisors (1981) 123 Cal.App.3d 334, 348-353, 355.

D. To the extent that a nexus requirement exists as to the requirement in Section 33367(D)(4), the City's Housing Element has a bearing on the Amendment because the Amendment and the Original Plan projected and implemented the destruction of 47 residential units, many of which were occupied and affordable to low and moderate income households. In contrast, the Housing Element is required, among other things, to assess the City's housing needs and to adopt quantified objectives and a five-year housing program to meet those housing needs, particularly the needs for housing affordable to low and moderate income households. The City's Housing Element did not substantially comply with the requirements of the Housing Element Law (Cal. Gov. Code §§ 65580 et. seq.) for the following reasons:

1. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(a)(3) for the following reasons, inter alia. The "Inventory of land suitable for residential development" consists merely of the City's existing zoning categories by gross acreage and maximum permissible density; it does not specify the vacant sites in the City which are suitable for such use and it does not consider areas not currently zoned for residential use which are suitable for such use, as required in Government Code Section 65583(a)(3). Additionally, the date on the gross acreage for higher density residential areas in the City's Land Use Element, rendering those two elements inconsistent and also in violation of Government Code Section 65300.5. (Sierra Club v. Board of Supervisors (1981) 126 Cal.App.3d 698.)

2. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(a)(4) for the following reasons, inter alia: (1) it fails to identify the City's discriminatory treatment against new low and moderate income housing which subjects it to a design review process apparently not applicable to other housing; (iii) it fails to analyze the densities required for the development of housing affordable to very low, low and moderate income households and it fails to determine whether the City has enough land zoned at such densities to meet its existing and future housing needs for those households; and (iv) it identifies, but fails to analyze, that implementation of its land use policy may result in the removal of housing;

3. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(a)(6) by failing to analyze the City's needs for emergency shelters;

4. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(b) in that it fails to establish quantified objectives equal either to the City's total housing needs by income category or to the maximum number of low and moderate income housing units that can be constructed, rehabilitated or conserved over a five-year-time-frame, as required in Government Code Section 65583(b). The Housing Element fails to provide any evidence to establish that the quantified objectives are the maximum number of housing units that can be constructed, rehabilitated, and conserved over a five-year time frame.

5. The Housing Element does not substantially comply with the provisions of Government Code Section

65583(c) (first paragraph) in that it fails to utilize in its housing programs land use and development controls or to provide available regulatory concessions and incentives for the development of very low and low income housing;

6. The housing element does not substantially comply with the provisions of Government Code Section 65583(c)(1) in that it fails to identify adequate sites which will be made available through appropriate zoning and development standards to meet the City's housing goals and needs for low and moderate income housing. The failure of the Housing Element to have an adequate inventory of land suitable for residential development makes compliance with this requirement impossible;

7. The Housing Element does not substantially comply with the provisions of Government Code Sections 65583(c)(2) in that it fails to include program actions which demonstrate that the City will use its local power to assist in the development of adequate housing to meet the City's needs for very low, low and moderate income households.

8. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(c)(3) in that it fails to address and remove governmental constraints to the maintenance, improvement and development of housing, particularly low and moderate income housing. The failure of the Housing Element to adequately analyze the City's governmental constraints makes compliance with this provisions impossible.

9. The Housing Element does not substantially comply with the provisions of Government Code Section

65583(c)(4) in that if fails to contain any program to conserve existing housing affordable to lower income households. (Buena Vista Gardens Apartment Assn. v. City of San Diego Planning Department (1985) 175 Cal.App.3d 289, 302-303.)

10. The Housing Element does not substantially comply with the provisions of Government Code Section 65588(a) in that it fails to contain an evaluation of the three factors specified in
Government Code Section 65588(a)(1) to (3). As noted by California Department of Housing and Community Development the only thing which could qualify as such an evaluation is the mere listing of gross annual housing production of housing. While this information might be considered to partially, though incompletely, satisfy the requirement for an evaluation of "progress in implementation" [Cal. Gov. Code Sec. 65588(a)(3)], the Housing Element is totally devoid of any evaluation of the "effectiveness of the element" or of the appropriateness of goals, objectives and policies." (Cal. Gov. Code Sec. 65588(a)(1) and (a)(2).

11. The City also failed to submit a draft of the Housing Element to the California Department of Housing and Community Development ("HCD") prior to its adoption in violation of Government Code Section 65585. The violation deprived HCD of its statutorily sanctioned input before adoption of the Housing Element and, in itself, rendered the Housing Element facially invalid.

This finding is based on the letter by HCD dated June 27, 1990 reviewing Duarte's adopted Housing Element." [A.R. 1124] That evidence is not rebutted by the declaration of Marc Blodgett submitted by

Defendants. Mr. Blodgett says that he "sent" the draft amended Housing Element to HCD but does not explain what he meant by "sent." This evidence does not invoke the presumption established by Evidence Code section 641. Furthermore, Mr. Blodgett does not state anywhere in his declaration that he was ever informed by any HCD staff that HCD had received the draft amended Housing Element. Consequently, the Court cannot conclude that Defendants complied with the requirement of Government Code section 65585 to submit the City's draft amended Housing Element to HCD at least 45 days prior to its adoption.

## XI. CONCLUSION

Based on the above, the Court hereby grants judgment in favor of Plaintiffs declaring that Ordinance No. 666 and Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project are void and of no effect. Furthermore, this Court grants judgment declaring that Defendants Community Redevelopment Agency of the City of Duarte and City of Duarte are not entitled to implement the Amendment or demand or receive tax increases in the Amendment area and that said Defendants are not entitled to expend any such revenues for carrying out the Amendment.

DATED: April 27, 1992

s/
RICHARD C. HUBBELL
Judge of the Superior Court

## APPENDIX E

NO. BC 007 801
(Consolidated with BC 008 824
and BC 009 159)

In the Superior Court of the State of California
for the County of Los Angeles

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CITRUS COMMUNITY COLLEGE DISTRICT,
*Plaintiff,*

VERSUS

ALL PERSONS INTERESTED IN THE MATTER OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.
*Defendants.*

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(Judgment April 27, 1992)
Before
HUBBELL, Superior Court Judge.

The above-captioned consolidated cases challenging the validity of Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project and Ordinance No. 666 approving the Amendment, came on regularly for trial on January 27, 1992, in Department 21 on the Superior Court of the State of California for the County of Los Angeles, the Honorable Richard C. Hubbell, presiding. The actions were filed pursuant to the Community Redevelopment Law ("CRL") (*Cal. Health & Safety Code §§ 33000 et seq.*) and Code of Civil Procedure Section 860 *et seq.*

John J. Wagner, Sisneros & Wagner appeared on behalf of Citrus Community College District ("Citrus College"), Plaintiff in LASC Case No. BC 007 801. De Witt W Clinton, County Counsel of the County of Los Angeles, by and thorugh Manuel A. Valenzuela, Deputy County Counsel appeared on behalf of the County of Los Angeles, Los Angeles Flood Control District, Los Angeles County Public Library and Consolidated Fire Protection District of Los Angeles County (collectively, the "County"), Plaintiffs in LASC Case No. BC 008 824. Jonathan Lehrer-Graiwer and John E. Rittmayer appeared on behalf of Alice Allen and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159. Jeffrey M. Oderman and Dan Slater of Rutan & Tucker appeared on behalf of Defendants.

The Court having taken the above matter under submission on January 27, 1992 after a trial, and having read and considered all of the exhibits and considered the summation of counsel and the evidence produced by both sides on trial of the issues, and having issued its ruling on the matter:

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

1. Amendment No. 1 to the Redevelopment Plan for the Rancho Duarte Phase III Redevelopment Project ("Amendment") in the City of Duarte and Ordinance No. 666 approving the Amendment are void and of no effect.

2. Defendants City of Duarte ("City") and Redevelopment Agency of the City of Duarte ("Agency") are not entitled to implement the Amendment or demand or receive tax increment revenues attributable to the assessed valuation increases in the Amendment area and that said Defendants are not entitle to expend any such revenues for carrying out the Amendment.

3. Defendants City and Agency are hereby permanently enjoined from taking any action to implement or carry out the Amendment, and from receiving any tax increment revenues from the Rancho Duarte Phase III Redevelopment Project area attributable to the Amendment.

4. Upon proper motion, Citrus Community College District, Plaintiff in LASC Case No. BC 007 801, shall be entitled to recover from Defendants City and Agency, and each of them, its costs of suit as provided in Code of Civil Procedure 1033.5, as determined by this Court.

5. Upon proper motion, County of Los Angeles, Los Angeles Flood Control District, Los Angeles County Public Library and Consolidated Fire

Protection District of Los Angeles County, Plaintiffs in LASC Case No. BC 008 824, shall be entitled to recover from Defendants City and Agency, and each of them, their costs of suit as provided in Code of Civil Procedure 1033.5, as determined by this Court.

6. Upon proper motion, Alice Allen and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159, shall be entitled to recover from Defendants City and Agency, and each of them, their costs of suit as provided in Code of Civil Procedure 1033.5, as determined by this Court.

DATED: April 27, 1992

RICHARD C. HUBBELL
Judge of the Superior Court